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Release 2003/01/24

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Office Memorandum • UNITED STATES GOVERNMENT

OGC Has Reviewed

TO : Director

DATE: 19 November 1948

FROM : General Counsel

Authorizations & Exceptions

SUBJECT: Audit Exceptions Concerning Per Diem Payments

Copies Filed in
Personnel Files of
Subject Individuals

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1. We have considered carefully the attached file concerning per diem payments made to Miss [] and Miss [] with particular reference to what action, if any, the Director is legally authorized to take. In spite of the lengthy memoranda which analyzed the technicalities of these cases, the situation seems simple.

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2. Per diems were authorized for each employee while in Washington on temporary duty, and vouchers were certified for payment by the certifying officers. At the time the payments were authorized and made, papers were on file in the office indicating that their addresses were in Washington. (It is apparently true that in conversations the employees were asked where their homes were and mentioned other than Washington addresses, but the fact remains that Personal History Statements and other documents set forth addresses in Washington.) It is apparent therefore that, although appointed for overseas stations with temporary duty in Washington, neither Miss [] nor Miss [] entered into actual travel status until they left Washington.

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3. Under the Standardized Government Travel Regulations, per diem may not be allowed until an employee enters into a bona fide travel status. Your instructions and the Special Funds Regulations in force at the time required compliance with the Standardized Government Travel Regulations. We feel it must be concluded that there was no basis for certification of the per diem vouchers for Miss [], as no circumstances existed which would raise an obligation on the part of the Government. This is based on the responsibility placed by law on the certifying officer, as set forth clearly in a recent decision of the Comptroller General (28 Comp. Gen. 17, B-74820).

4. In that case, the Commissioner of Internal Revenue had certified a voucher in which an erroneous computation had been made by subordinates. The exception was not taken by the auditor until two and one-half years later, by which time the statute of limitations prevented any recovery from the taxpayer. The Secretary

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of the Treasury pointed out that there was no fault or negligence of the certifying officer and that the Comptroller General may in his discretion relieve a certifying officer of liability whenever:

a. He finds that the certification was based on official records and that such certifying officer or employee did not know and by reasonable diligence and inquiry could not ascertain the actual facts; or

b. That the obligation was incurred in good faith that the payment was not contrary to any statutory provision and that the United States has received value for the payment.

In his answer, the Comptroller General pointed out that under the law an officer certifying a voucher shall:

a. Be held responsible for the existence and correctness of the facts recited in the certificate or otherwise stated in the voucher or its supporting papers, and for the legality of the proposed payment under the appropriation or fund involved; and

b. Be held accountable for and required to make good to the United States the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificate made by him, as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved.

He quoted an earlier opinion to the effect that a certifying officer may not escape liability for losses resulting from his improper certification merely by stating that he was not in a position to ascertain of his personal knowledge that each item on the voucher was correctly stated.

5. If the error could have been discovered by exercise of reasonable diligence and inquiry, the relief may not be granted under the Comptroller General's statutory authority under the first proviso of the authority quoted above, and if the United States does not receive value for amount of

the amount of the error